

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 17 1973

OFFICE OF THE
ADMINISTRATOR

Dear Governor Milliken:

I am approving your request to conduct a State Permit Program pursuant to the provisions of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Federal Water Pollution Control Act Amendments of 1972 (the "Act"). Accordingly, I am suspending the issuance of permits by the Environmental Protection Agency under subsection (a) of section 402 of the Act as to all discharges in the State of Michigan other than those from agencies and instrumentalities of the Federal Government.

The program that you conduct pursuant to this authority must at all times be in accordance with section 402 of the Act, all guidelines promulgated pursuant to section 304(h)(2) of the Act, and the agreement between the Regional Administrator of EPA's Region V and the Executive Secretary of the Michigan Water Resources Commission, which I have also approved today. Specifically your attention is directed to clause A, of Part XIV on page 8 of the agreement and the related attachments which schedule completion of all permits in the State of Michigan by December 31, 1974. Because of the severe consequences that could accrue to facilities discharging without an NPDES permit after that date we urge that every effort be undertaken to ensure that this schedule is met.

During the period of interim authorization Michigan indicated a willingness and ability to comply with both the spirit and the letter of the Act. Based upon this performance during the interim period and the description of the program you have submitted I am pleased to approve Michigan's Permit Program.

File 8.8

Michigan is the first State in the Midwest to receive approval of a permit program under this comprehensive new water pollution law. Michigan's actions in the past have shown that water quality can be enhanced. Speaking on behalf of the Environmental Protection Agency and its staff let me assure you that we are anxious to aid you in continuing this progress towards the elimination of water pollution.

Sincerely yours,

/s/ Russell E. Train

Russell E. Train

Honorable William G. Milliken
Governor of Michigan
Lansing, Michigan 48926

10/19/73 cc: Mayo
Adamkus
Kirkwood
Sheldon/Liebling
Division Directors
/Manzardo (6)
Section Chiefs, Enforcement Branch

MEMORANDUM OF AGREEMENT
BETWEEN THE
MICHIGAN WATER RESOURCES COMMISSION
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Michigan Water Resources Commission, the Chief Administrative Officer of the Commission (referred to herein as the Executive Secretary), and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c), 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

- A. The two purposes of this part of the agreement are: (1) to provide for the transfer of data bearing on NPDES permit determinations from the EPA to the State of Michigan, Water Resources Commission, and (2) to insure that any deficiencies in the transferred NPDES application will be corrected prior to issuance of an NPDES permit.
- B. Commencing immediately the Regional Administrator will transmit to the Executive Secretary a list of all NPDES permit applications received by EPA. This list will include the name of each discharger, SIC Code, application number and indicate whether EPA has determined which applications are complete.
- C. After receipt of the list, the Executive Secretary will identify the priority order to be used by EPA to transmit the application files to him. The application file will include the NPDES permit application and any other pertinent data collected by EPA. The application files will be transmitted to the Executive Secretary according to the priority order identified, and EPA will retain one copy of each file transmitted to the Executive Secretary.

- D. For an application identified as not complete by EPA, the Executive Secretary will obtain the necessary information from the discharger and correct the application. The Executive Secretary, at his discretion, may also obtain additional information for those applications identified by EPA as complete to update or process the application.
- E. Once the Executive Secretary determines that an application is complete, he will transmit two (2) copies of the completed application and a cover letter indicating that the application has been determined to be completed to the Regional Administrator, Attention: Permit Branch. If EPA concurs that the application is complete, one copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, for processing into the National Data Bank and the other copy will be placed in the NPDES Permit Branch file.
- F. The Executive Secretary will be advised by letter that the Regional NPDES Permit Branch concurs with his determination and that a copy of the application has been transmitted to the Data Management Section. If EPA determines that the application is not complete, the Regional NPDES Permit Branch will identify the deficiencies by letter to the Executive Secretary.
- G. No NPDES Permit will be issued by the Commission until all deficiencies identified by the U.S. EPA are corrected and the Executive Secretary receives a letter from EPA certifying to the Executive Secretary that the application is complete.

II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

- A. The Executive Secretary will transmit to the Regional Administrator copies of NPDES forms submitted by the applicant to the State. When the State determines that the NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted to the Regional Administrator, Attention: Permit Branch. If EPA concurs with the Executive Secretary, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Executive Secretary will be advised by letter that EPA concurs with his determination and that a copy of the application has been transferred to the U.S. EPA Regional Data Management Section.* If EPA determines that the application is not complete, the deficiencies will be identified by letter to the Executive Secretary. No NPDES permit will be issued by the Commission until the deficiencies are corrected and he has been advised in writing by EPA that the application is complete.

* The State may input directly into the National Data Bank subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section.

- B. Upon receiving an NPDES form from the Executive Secretary, should the Regional Administrator identify any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge, and notifies the Executive Secretary, the Executive Secretary will require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.
- C. When requested by the Regional Administrator, the Executive Secretary will transmit copies of notice received by him from publicly-owned treatment works pursuant to 40 CFR 124.45(d) and (e) within 15 days of receipt of the request.
- D. The Regional Administrator may waive his rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be issued by the Regional Administrator before the Executive Secretary can discontinue transmitting to EPA copies of NPDES forms.

III. 124.35(b) and (c) PUBLIC ACCESS TO INFORMATION

- A. The Executive Secretary will protect any information (other than effluent data) contained in such NPDES form, or other records, reports or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If however, the information being considered for confidential treatment is contained in NPDES form, the Executive Secretary will forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he will request advice from the Office of General Counsel, stating the reasons for his disagreement with the determination of the Executive Secretary. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator and will notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator will communicate to the Commission his decision not to concur in the withholding of such information, and the Commission and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.

- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Commission, upon written request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

IV. 124.41(c) DRAFT PERMIT OBJECTIONS

The Commission will not issue an NPDES permit for a discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided in Section 402(d) of the Federal Act. The Regional Administrator will notify the Commission in writing of any objections he has within 90 days of receipt of a copy of a permit application. The resolution by the Commission of these objections will be communicated in writing by the Executive Secretary to the Regional Administrator, and no permit will be issued before written approval of such resolution by the Regional Administrator is received by the Commission.

V. 124.44(d) SCHEDULE OF COMPLIANCE IN ISSUED NPDES PERMITS

On the last day of the months of February, May, August, and November the Executive Secretary will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an interim or final requirement or to notify the Executive Secretary of compliance or noncompliance with each interim or final requirement [as required pursuant to paragraph, 40 CFR 124.44(b)]. The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of noncompliance:

- (1) The name and address of each noncomplying NPDES permittee;
- (2) A short description of each instance of noncompliance (e.g. failure to submit preliminary plans, 2-week delay in commencement of construction of treatment facility, failure to notify the Executive Secretary of compliance with an interim requirement to complete construction by June 30, etc.);
- (3) A short description of any action or proposed action by the permittee or the Executive Secretary to comply or enforce compliance with an interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g. construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

VI. SECTION 124.45 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF PROPOSED NPDES PERMITS ADMINISTRATOR
OF PROPOSED NPDES PERMITS

- A. At the time a public notice required by 40 CFR 124.32 is issued, the Executive Secretary will transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit and a list of all persons receiving the public notice, fact sheets and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: NPDES Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.
- B. After a Public Notice period has expired, the Commission will consider all comments received as a result of the Public Notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings may be held as provided for in 40 CFR 124.36. If a public hearing is held, the Commission will consider all comments and may modify the proposed NPDES permit as it considers appropriate. If a public hearing is requested and should the Commission decide not to hold a public hearing, it will provide the Regional Administrator and all parties requesting the hearing, a written explanation of why the hearing was not held before submitting the proposed NPDES permit to the Regional Administrator for approval.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or public hearing, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: NPDES Permit Branch, together with a copy of all statements received from the public notice, and where a public hearing is held, a summary of all objections with a request for approval to issue the NPDES permit. In lieu of a summary, the Executive Secretary may provide a verbatim transcript of the entire public hearing.
- D. If a proposed NPDES permit is not revised after a public notice or where held, a public hearing, the Executive Secretary will notify the Regional Administrator, Attention: NPDES Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and request approval to issue the NPDES permit. The request for approval will include a copy of all written statements received from the public notice.
- E. The Regional Administrator will be provided 90 days from the time the letter requesting approval specified in either paragraph C or D above is received in which the Regional Administrator pursuant to any right to object provided in Section 402(d) (2) of the Federal Act, may comment upon, object to or make recommendations with respect to the proposed NPDES permit. It is Regional policy to attempt to process each request for approval within 30 days. If no comment is received by the Commission within 90 days, it will assume that EPA has no objection to NPDES permit issuance.

- F. No NPDES permit will be issued by the Commission until it receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402(b) of the Federal Act, or if no comment is received by the Commission from EPA within 90 days as provided in E above.
- G. The Regional Administrator may waive his rights to receive, review object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be issued by the Regional Administrator before the Commission can issue an NPDES permit without EPA approval.

VII. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF ISSUED NPDES PERMITS

- A. The Executive Secretary will transmit to the Regional Administrator two (2) copies of every issued NPDES permit, Attention: NPDES Permit Branch, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.
- B. The Executive Secretary will transmit the above information at the same time the NPDES permit is issued by the Commission to the applicant together with a copy of the Executive Secretary's letter to the applicant forwarding the NPDES permit.

VIII. 124.61(b) MONITORING

- A. Permit conditions issued by the Commission for any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Federal Act, will require monitoring by the permittee for at least the following:
- (i) Flow (in gallons per day); and
 - (ii) All of the following pollutants:
 - (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
 - (b) Pollutants which the Commission finds, on the basis of information available to it, could have a significant impact on the quality of navigable waters;

- (c) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring ; and
 - (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing be monitored.
- B. The Regional Administrator may make the request specified in A (2) and (3) above at any time before an NPDES permit is issued.
- C. The Commission will evaluate data submitted by NPDES permittees in NPDES reporting forms and other forms supplying monitoring data, for possible enforcement or remedial action. The Executive Secretary will transmit copies of the forms together with his evaluation where the data shows that effluent limits in the NPDES permits are exceeded to the Regional Administrator at a frequency consistent with the reporting frequency specified in the NPDES permit. Where monitoring data shows that effluent limits are exceeded, the Executive Secretary will identify the effluent limits exceeded, describe briefly any action or proposed actions by the NPDES permittee or the Commission to comply or enforce compliance with the limits and describe any details which tend to explain or mitigate an instance of noncompliance.

IX. 124.62 (c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Commission shall notify and require the permittee to extend the normal 3 year retention of monitoring records under Section 124.62(c)

X. 124.71 (c) RECEIPT AND FOLLOW-UP OF NOTIFICATIONS AND REQUESTS

If the Executive Secretary determines that a condition of a permit to a publicly owned treatment works relating to a new introduction or changes in the volume or character of pollutants introduced into such treatment works is violated, he shall notify the Regional Administrator in writing and consider taking action under section 402(h) of the Federal Act relating to proceedings to restrict or prohibit the introduction of pollutants into treatment works.

XI. 124.72 (b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If the Executive Secretary, upon request of the permittee, decides to revise or modify a schedule of compliance for good cause, he shall notify the Regional Administrator in writing and, if no written objection is received from the Regional Administrator within 30 days of receipt of the notice, he shall deem it approved.
- B. Any such revision or modification of a schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.

XII. 124.73 (b) (2) ENFORCEMENT

The Executive Secretary or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerment to the health or welfare of persons resulting from the discharge of pollutants. The Executive Secretary or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the District Offices or the Regional Offices, as the Executive Secretary determines appropriate.

XIII. 124.80 (d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator shall transmit to the Executive Secretary any policies, technical information or requirements specified by the Administrator in regulations issued pursuant to the Act or in directives issued to Environmental Protection Agency regional offices.

XIV. OTHER TERMS

A. Attached hereto is a list of major dischargers which shall be given priority in processing and a schedule for such processing. This schedule is premised on the availability of guidance material from EPA for dischargers identified. Also attached is a six month schedule covering all permits to be processed in the six month period. This is the first part of the schedule aimed at completing all permits to be issued in the State of Michigan by December 31, 1974. The schedule will be expanded by the Executive Secretary on a quarterly basis thereafter to identify the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Executive Secretary to the Regional Administrator for review.

B. This Memorandum of Agreement may be modified by the Executive Secretary and the Regional Administrator following the public hearing to evaluate the States Section 402(b) program submittal on the basis of issues raised at the hearing. The hearing record will be left open for a period of 5 days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of agreements following the public hearing will be finalized, reduced to writing and signed by the Executive Secretary and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of EPA for review and approval. The Executive Secretary and Regional Administrator will make any such revised agreements available to the public for inspection and copying.

C. All agreements between the State of Michigan and the Regional Administrator are subject to review by the Administrator of EPA. If the Administrator of EPA determines that any provisions of such agreements do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of the Section 304(h) (2) Guidelines, he will notify the State and the Regional Administrator of any revisions or modifications which must be made in the written agreements.

D. This Memorandum of Agreement will take effect upon program approval by the Administrator of EPA pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972.

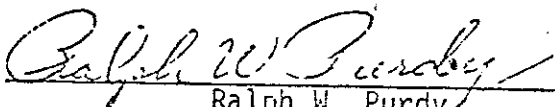
This Memorandum shall remain in effect for the duration of such approved program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods contained herein.

Michigan Water Resources Commission

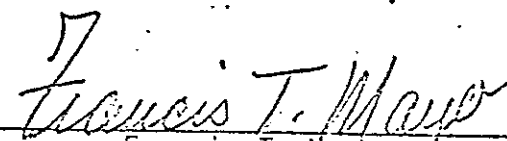
U. S. Environmental Protection Agency
Region V

By

By



Ralph W. Purdy
Executive Secretary



Francis T. Mayo
Regional Administrator

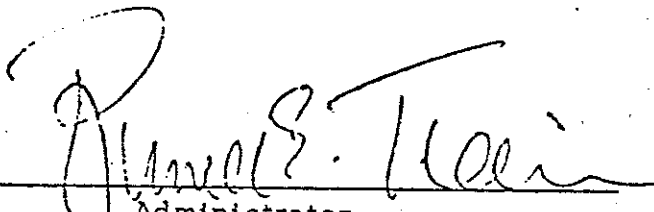
9-7-73

Date

9/14/73

Date

APPROVED:



Administrator
Environmental Protection Agency

OCT 17 1973

Date